IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

WA.No. 1306 of 2004(A)

(**AGAINST THE JUDGEMENT IN OP.38862/2002 Dated 01/06/2004)**
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APPELLANTS/ PETITIONERS:
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1. CHERIAN JOSEPH, KOTTUKAPPALLIL PUTHUMANA, KADAPPATTOOR, KOTTAYAM.

2. ACHAMMA JOSEPH, W/O. CHERIAN JOSEPH, DO. DO.

3. SANJU JOSEPH, S/O. CHERIAN JOSEPH DO. DO. BY POWER OF ATTORNEY HOLDER CHERIAN JOSEPH, DO. DO.

BY ADV. SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.

RESPONDENTS/RESPONDENTS:
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1. THE TAHSILDAR, MEENACHIL TALUK.

2. THE REVENUE DIVISIONAL OFFICER, PALA.

BY SR. GOVERNMENT PLEADER SHRI MUHAMMED RAFIQ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 1306 OF 2004

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Dated this the 12th July, 2007

J U D G M E N T

H.L. Dattu, C.J.:

The appellants/petitioners before us are calling in question the correctness or otherwise of the orders passed by the learned single Judge in O.P. 38862 of 2002 dated 01.06.2004. The facts in nut shell are , as under:

2. The appellants claimed that they are the owners of three separate independent buildings . However, the Tahsildar, who is the assessing authority under the provisions of the Kerala Building Tax Act, 1975 had treated the buildings in question as one block and had completed the assessment.

2(a) Aggrieved by the orders passed by the assessing authority, the assessees had carried the matter, by way of first appeal before the first appellate authority. The first appellate authority, after inspecting the place, had passed an order, setting aside the order of assessment passed by the assessing authority and thereafter had remanded the matter to the assessing authority to re-do the matter, in accordance with law , in the light of certain observations made in the course of the order.

2(b) After such remand, the assessing authority had passed fresh orders of assessment and those orders are produced by the appellants/petitioners along with the memorandum of appeal as Ext. P3 .

2(c) The assessing authority, being of the opinion that there was an error apparent on the face of the record and in the fresh orders of assessment

passed, had initiated proceedings to rectify the said mistakes, by issuing show cause notice to the appellants/petitioners. After receipt of notice, the appellants/petitioners had filed their objections, disputing the claim made in the show cause notice and had further requested to drop the proceedings, after considering the objections filed by them .

2(d) The assessing authority had passed orders under section 15 of the Kerala Building Tax Act and thereafter had issued Exts. P5(3), P5(a)3 and P5(b)3 notices, directing the appellants/petitioners to pay the enhanced building tax. Aggrieved by the aforesaid notices, the appellants/petitioners were before this court in O.P.No. 38862 of 2002. The learned single Judge had disposed of the matter. Aggrieved by the orders passed by the learned single Judge, the appellants/petitioners are before us in this appeal.

3. We do not intend to enter into the factual details for disposal of this appeal. In our opinion, the impugned order passed by the assessing authority in exercise of his powers under section 15 of the Kerala Building Tax Act was the subject matter of the Original Petition.

4. In the normal course, the learned single Judge should have relegated the appellants/petitioners to file appropriate appeals as provided under section 11 of the Kerala Building Tax Act. Without doing so, the learned single Judge had tried to decide the case on merits. In our opinion, the said order passed by the learned single Judge cannot be sustained by us. In view of the above, we pass the following order:

O R D E R

i) The order passed by the learned single Judge is set aside.

ii) The appellants/petitioners shall file appropriate appeals, if they are aggrieved by the orders passed by the assessing authority in exercise of his powers under section 15 of the Kerala Building Tax Act (Ext.P5) before the appellate authority within a period of one month from today.

iii) If such appeals are filed, the appellate authority shall consider the appeals on merits, without reference to the period of limitation.

iv) The appellate authority shall not be influenced by any one of the observations made by the learned single Judge.

vi) Liberty is reserved to the appellants/petitioners to urge all such contentions which are available to him, including the contentions raised in the Original Petition as well as in the Writ Appeal.

vii) The interim order granted by this court will enure to the benefit of the appellants/petitioners for a further period of one month from today.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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